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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,088	12/01/2003	Karl-Friedrich Laible	2001P14020WOUS	1754
46726 7590 12/12/2007 BSH HOME APPLIANCES CORPORATION INTELLECTUAL PROPERTY DEPARTMENT 100 BOSCH BOULEVARD NEW BERN, NC 28562			EXAMINER TRAN, HANH VAN	
			ART UNIT 3637	PAPER NUMBER
			MAIL DATE 12/12/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/725,088	Applicant(s) LAIBLE, KARL-FRIEDRICH	
	Examiner Hanh V. Tran	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 7-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 10-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/1/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is the First Office Action on the Merits from the examiner in charge of this application.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Election/Restrictions

3. Applicant's election without traverse of Species I (figures 2-5) in the reply filed on 9/26/2007 is acknowledged.
4. Claims 7-9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species II, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9/26/2007.

Specification

5. The abstract of the disclosure is objected to because it includes legal phraseology, such as "means". Correction is required. See MPEP § 608.01(b).
6. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The

disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In each of the independent claims listed above, there is an inconsistency between the language in the preamble and certain portions in the body of the claim, thereby making the scope of the claim unclear. More specifically, the preamble clearly indicates that a subcombination is being claimed, i.e., "in a cold goods container for a cooling apparatus having an open front side, at least one pullout shelf, and sidewalls diverging in a direction of the front side, a guide assembly comprising:..." This language would lead the examiner to believe applicant intends to claim only the subcombination of a guide assembly, the cooling apparatus and its elements are only functionally recited. The problem arises when the cooling apparatus and/or its elements are positively recited within the body of the claim, i.e., "at least one pair of guide rails guiding the pullout shelf" or "said compensating element mounting at least one guide rail of each of said pair of guide rails at one of the sidewalls". The examiner cannot be sure if applicant's intent is to claim merely the guide assembly or the guide assembly in combination with the cooling apparatus and its elements. Applicant is required to clarify what the claim is intended to be drawn to, i.e., either the guide assembly alone or the

guide assembly in combination with the cooling apparatus and its elements, and the language of the claim is amended to be consistent with the intent. For the purpose of this examination, the examiner is considering that the claim is drawn to the combination.

9. Claim 3, since claim already recited a compensating element, the recitation in claim 3, line 2 of each guide rail having "a compensating element" renders the claim indefinite for failing to clearly define whether it is the same or different from the compensating element recited in claim 1.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-5, 10-19 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 29817743.

DE '743 discloses a cold goods container comprising a cooling apparatus having an open front side, at least one pullout shelf, and sidewalls diverging in a direction of the front side, a guide assembly comprising at least one pair of guide rails 31-32 guiding the pullout shelf at least partway out of the cold goods container through the open front side; and a plurality of compensating element 34-37 provided to each of said guide rails for mounting at least one guide rail of each of said pair of guide rails at one of the sidewalls at an acute angle to the sidewall, said angle being defined to extend said rails of said pair of guide rails parallel to one another, wherein said compensating elements

are mirror-symmetrical, wherein said compensating element is formed at said guide rail in one piece and integral with said guide rail, said guide rail has a C-shaped cross-section with a top leg, a bottom leg, and a center piece joining said top and bottom legs; and said compensating element is formed in said center piece, said compensating element has a contact surface adjoining the sidewall; and said guide rail carries, on said contact surface of said compensating element, at least one hook 35,37 protruding through an opening 21-22 of the sidewall, such as shown in Fig 4, wherein: the sidewalls have ribs; and said at least one pair of guide rails are mounted in a region of said sidewalls without the ribs.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 29817743 in view of USP 6,641,239 to Kaiser.

DE '743 discloses all the elements as discussed above except for the compensating element is wedge shaped and extends substantially over an entire length of the guide rail.

Kaiser teaches the idea of providing a cooling apparatus with a pair of guide rails, such as shown in Figs 2 & 6, wherein each guide rail comprises a compensating element having a wedge shaped and extends substantially over an entire length of the guide rail, such as shown in Fig 6, for the purpose of compensating for at least one oblique position of the pullout shelf/storage compartment. Therefore, it would have been obvious to modify the structure of DE '743 by providing the compensating element with a wedge shaped that extends substantially over an entire length of the guide rail for the purpose of compensating for at least one oblique position of the pullout shelf/storage compartment, as taught by Kaiser, since both teach alternate conventional cooling apparatus structure, used for the same intended purpose, thereby providing structure as claimed.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wilkins et al, and Mikulas both show structures similar to various elements of applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (571) 272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HVT
December 10, 2007


Hanh V. Tran
Art Unit 3637